IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.731 of 2010

United India Insurance Company Ltd.,
rep. By its Divisional Office-1,
104-A, Peramanoor Main Road,
Salem-7. .. Appellant/R2

versus

1.Kokila
2.Minor L.Jithish
(Minor rep. by his next friend/
Guardian mother Kokila)
3.Raju ..R1 to R3/Petitioner
4.K.Chandu
5.M.Manikkanan .. R4 & R5/R1 & R3

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.07.2009 made in M.C.O.P. No.1887 of 2006 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Salem.

For appellant : Mr. J.Chandran

For respondents
1 to 3 : Mr. R.Marudhachala Murthy
R5-Exparte before tribunal
R4-Not Ready notice

JUDGMENT

The Civil Miscellaneous Appeal has been directed against the impugned award dated 06.07.2009 made in M.C.O.P. No.1887 of 2006 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Salem, in and by which, the Tribunal has awarded a total compensation of Rs.5,51,500/- as against the claim of Rs.7,00,000/- for the loss of life of the bread winner of the family.

2. Background facts in a nutshell are as follows:
On 23.05.2006 at about 10.50 p.m., while the deceased was riding the motor cycle bearing Registration No.TSF 4442 at Ooty Spenser Road, near Collectorate, the driver of the Mahindra Jeep

bearing Registration No.TN-43-8506 drove the vehicle in a rash and negligent manner from the Gudalur route in the opposite direction to the deceased and dashed against the deceased. Due to the above said accident, the deceased died. According to the claimants, the accident was occurred due to the the rash and negligent driving of the driver of the jeep. The claimants are wife, son and father of the deceased respectively. They claimed a sum of Rs.7,00,000/- as compensation. The appellant-Insurance Company resisted the claim.

3.After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the jeep and further held that both respondents 1 and 2 therein/owner and insurer of the vehicle are jointly and severally liable to pay the compensation and awarded a compensation of Rs.5,51,500/- with interest at the rate of 7.5% per annum from the date of petition and the details of the same are as under:-

Loss of income	Rs.5,04,000/-
Loss of love and affection	Rs. 20,000/-
Loss of consortium	Rs. 20,000/-
Loss of estate	Rs. 2,500/-
Funeral expenses	Rs. 5,000/-
Total	Rs.5,51,500/-

Aggrieved by that award, the appellant has filed the present appeal.

4.Learned counsel appearing for the appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. He would further submit that the Tribunal has erred in fixing the entire liability on the part of the driver of the jeep, insured with the appellant, without properly considering the oral and documentary evidence. He would further submit that the Tribunal failed to note that the deceased was not accompanied by a pillion rider and he was holding only an L.L.R. and was not acquainted with the rules of the road, which led to the accident. The Tribunal has failed to note that P.W.2/the alleged eye witness to the accident was the co-brother of the deceased and an interested witness and his evidence was contradictory and unbelievable and therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5.Learned counsel appearing for the respondents/claimants submitted that though the Tribunal had considered all the relevant materials and evidence on record, it ought to have awarded compensation as claimed by the claimants and the amount awarded under various heads are very low and the Tribunal has not followed the principles of assessment before passing the award. He further submitted that the amount awarded by the Tribunal is very low and meagre and seeks to enhance the compensation.

6.Heard both the learned counsel and perused the document on record. On the side of the claimants, P.Ws.1 to 3 were examined and documents Exs.P1 to P9 were marked. On the side of the appellant, R.W.1 was examined and Ex.R1/the copy of the insurance policy was marked.

7.This Court is not able to see any merits in the contention made by the learned counsel for the appellant. The reason is that when the driver of the jeep, who caused the accident, was convicted for the offence under Sections 279 and 304(A) of IPC. in Crime No.574 of 2006 on the file of B-1 Town Central Police Station, Nilgiris District for drunken driving, the conclusion arrived at by the Tribunal that there is no evidence to show that the owner allowed the driver to drive the vehicle in a drunken stage and therefore the Insurance Company cannot escape from liability and even for taking granted that the drunken driving is violation of the policy condition, the insured can pay the compensation to the claimants and recover the same from the owner or its driver, cannot be found fault with. Though the Tribunal has arrived at a correct conclusion that due to the negligent driving made by the driver of the jeep, the accident had occurred, considering the age of the deceased as '38', it has wrongly applied the multiplier '14', while fixing the loss of income, whereby the Tribunal has fixed the monthly income of the deceased at Rs.4,500/-, considering the occupation of the deceased as 'Cable Operator', by deducting 1/3rd of his income towards his personal and living expenses and arrived at Rs.5,04,000/- towards loss of income. On this basis, it is relevant to consider the scope of the multiplier in the case of Sarala Varma and others -vs- Delhi Transport Corporation and another reported in 2009 ACJ 1298 and in para 21, the Apex Court has held as follows:

> "21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying GENERAL MANAGER, KERALA STATE ROAD TRANSPORT CORPORATION VS. SUSAMMAL THOMAS (SUPRA), U.P. STATE ROAD TRANSPORT CORPORATION VS. TRILOK CHANDRA (SUPRA) AND NEW INDIA ASSURANCE COMPANY LIMITED VS. CHARLIE (SUPRA), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then

reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

8.In the present case, the age of the deceased was 38 years at the time of the accident. Following the above said decision, the multiplier should be adopted is '15' and the loss of income would be Rs.5,40,000/- (3000x12x15) and hence the same is hereby awarded. According to the learned counsel appearing for the claimants, as the sum awarded under the heads 'loss of consortium' and 'loss of love and affection', are very meagre amount, the same need enhancement. Considering the submission made by the learned counsel appearing for the claimants, this Court finds it reasonable to fix a sum of Rs.50,000/- each under the heads 'loss of love and affection' and 'loss of consortium', on the basis of ratio laid down in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (4) TN MAC 44 (SC) wherein it has been mentioned that the Court has to award minimum a sum of Rs.1,00,000/- towards 'loss of love and affection' and a sum of Rs.1,00,000/- towards 'loss of consortium'. Considering the fact that the accident took place in the year 2006, this Court is inclined to enhance the amount of Rs.20,000/-, awarded by the Tribunal to Rs.50,000/- each under the above heads and hence the same is hereby awarded. The Tribunal has awarded a sum of Rs.2,500/- towards loss of estate and Rs.5,000/- towards funeral expenses, which are considered to be reasonable and hence the same are confirmed. As per the above discussion, the enhanced amount of compensation are as follows:

Loss of income	Rs.5,40,000/-
Loss of love and affection	Rs. 50,000/-
Loss of consortium	Rs. 50,000/-
Loss of estate	Rs. 2,500/-
Funeral expenses	Rs. 5,000/-
Total	Rs.6,47,500/-

The claimants are entitled to the enhanced compensation of Rs.6,47,500/- with interest at 7.5% as against Rs.5,51,500/- awarded by the Tribunal.

9.It is made clear that the Insurance company shall pay the amount and recover the same from the owner, as observed by the Tribunal. Therefore, the appellant-Insurance company is directed to deposit the entire compensation amount including the enhanced amount, after deducting the amount that has already been deposited by them, with proportionate interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/respondents are permitted to withdraw the same in the ratio fixed by the Tribunal, on making proper application. It is also made clear that liberty is given to the appellant-Insurance company to initiate recovery proceedings against the owner of the jeep, by filing appropriate petition, in accordance with law.

10. With the above direction, the Civil Miscellaneous Appeal is disposed of. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. Motor Accidents Claims Tribunal
   (Principal District Judge), Salem.

+1 cc to Mr.J.Chandran Advocate sr.4375

C.M.A. No.731 of 2010

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